

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

MARIO ANTHONY ALLEN,)	
)	
Petitioner,)	
)	
vs.)	CAUSE NO. 3:07-CV-163
)	
EDWARD BUSS,)	
)	
Respondent.)	

OPINION AND ORDER

This matter is before the Court on: (1) the Request For Certificate of Appealability, filed by Petitioner, Mario Anthony Allen, on November 26, 2007; and (2) the Motion For Leave to Appeal In Forma Pauperis, also filed by Petitioner, Mario Anthony Allen, on November 26, 2007. For the reasons set forth below, the request for a certificate of appealability (docket # 31) is **DENIED AS MOOT**, and the motion to appeal *in forma pauperis* (docket # 30) is **DENIED**. Allen is **GRANTED** to and including January 7, 2008, to pre-pay the full \$455 filing fee, and is cautioned that if he fails to pay the required filing fee by the aforementioned date, this appeal may be dismissed without further notice and without affecting his obligation to pay the filing fee in installments.

BACKGROUND

On May 2, 2007, this Court entered an order dismissing Allen's habeas corpus petition pursuant to Section 2254 Habeas Corpus Rule 4, because it was filed after the expiration of the 1-year period of limitation imposed by 28 U.S.C. § 2244(d). Allen then filed several motions to reconsider this Court's decision, and those motions were denied in an order dated May 29, 2007. Allen then filed two more motions to reconsider. Having raised nothing new, those motions were denied in a brief order from this Court dated June 18, 2007. In response, Allen filed another motion to reconsider. Having previously denied two motions to reconsider, the Court entered an order dated July 3, 2007, denying the motion and cautioning Allen that he could be fined, sanctioned, or restricted if he filed any additional meritless motions in this case. Allen then filed yet another motion to reconsider which was denied on July 11, 2007, with a similar warning. Chastened, but undeterred from filing, Allen then moved to withdraw his last motion. On July 17, 2007, that motion was denied as moot and Allen was again cautioned about meritless filings in this closed case.

It seemed for a time that Allen understood that this case was closed, but then nearly four months later, on November 5, 2007, Allen filed one last motion to reconsider and reopen the case. Having already issued four orders denying multiple (and sometimes duplicate) motions to reconsider, and having thrice cautioned Allen that he would be fined, sanctioned or restricted if he persisted in

filing meritless documents in this case, the Court issued its fifth order on November 7, 2007, denying a motion or motions to reconsider and sanctioning Allen by directing the clerk to return unfiled any papers submitted in this case by or on behalf of Allen (except for a notice of appeal and any associated documents).

Allen filed a notice of appeal on November 26, 2007. Allen asserts that this Court erred in denying his last motion to reopen this case. This last motion was filed on November 5, 2007 (docket #27), and the Court entered the order denying it on November 7, 2007 (docket #28).

DISCUSSION

Certificate of Appealability

Pursuant to 28 U.S.C. § 2253(c)(1)(A), a certificate of appealability is only required when appealing from the final order in a habeas corpus proceeding. Because Allen is not appealing from the final order (issued May 2, 2007), a certificate of appealability is inapplicable and the motion will be **DENIED AS MOOT**.

In Forma Pauperis

Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." Substantively, this appeal is

not taken in good faith for the reasons described in detail in this Court's orders dated May 2, 2007 (docket #4), May 29, 2007 (docket #12), June 18, 2007 (docket #17), July 3, 2007 (docket #20), July 11, 2007 (docket #23), and November 7, 2007 (docket #28). Therefore, Allen's request to appeal *in forma pauperis* is **DENIED**.

CONCLUSION

For the reasons set forth above, the request for a certificate of appealability (docket # 31) is **DENIED AS MOOT**, and the motion to appeal *in forma pauperis* (docket # 30) is **DENIED**. Allen is **GRANTED** to and including January 7, 2008, to pre-pay the full \$455 filing fee, and is cautioned that if he fails to pay the required filing fee by the aforementioned date, this appeal may be dismissed without further notice and without affecting his obligation to pay the filing fee in installments.

DATED: December 5, 2007

**/s/ RUDY LOZANO, Judge
United States District Court**